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DA 97-1046

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In the Matter of

**Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Ironton and Malden,
Missouri)**

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) **MM Docket No. 97-136**
) **RM-9083**
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Released: May 23, 1997

Reply Date: July 29, 1997

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by B.B.C. Inc. ("B.B.C."), requesting the substitution of Channel 225C2 for Channel 225C3 at Malden, Missouri. B.B.C. also requests modification of its license for Station KMAL(FM), Channel 225C3, to specify operation on Channel 225C2. To accommodate the substitution at Malden, B.B.C. further requests the substitution of Channel 224A for Channel 225A at Ironton, Missouri. B.B.C provided an engineering study in support of the proposal and indicated it would apply for Channel 225C2 at Malden.
2. In support of its request, B.B.C states that Station KMAL(FM), operating on Channel 225C3, provides 60 dBu service to an area encompassing 2,659 square kilometers with a population of 44,934 people. According to B.B.C, if Station KMAL(FM) could operate on Channel 225C2 it could increase its coverage to 8,544 square kilometers serving a population of 140,045 people. Further, because the 60 dBu service contour of the proposed Class C2 facilities would completely encompass the existing 60 dBu contour of the C3 facility, no person would experience a loss in service as a result of the upgrade. B.B.C acknowledges the short spacing to Station KYLS, Channel 225A, Ironton, Missouri, and requests that Channel 224A be substituted for Channel 225A at Ironton and that the license for Station KYLS be modified

accordingly.¹ B.B.C states its intention to reimburse Station KYLS for reasonable expenses in changing channels if the rulemaking is adopted.

3. We believe B.B.C.'s proposal warrants consideration because the proposed substitution could provide Malden with expanded reception service. Channel 225C2 can be allotted to Malden, Missouri, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 224A is substituted for Channel 225A at Ironton.² The proposed substitution at Ironton can be accomplished in compliance with the minimum distance separation requirements of the Commission's Rules at the current site of Station KYLS.³ We shall also propose to modify the license for Station KMAL(FM) to specify operation on Channel 225C2 in accordance with Section 1.420(g) of the Commission's Rules.

4. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it would reimburse the affected station for the costs incurred in changing frequencies. B.B.C. has acknowledged its responsibility to reimburse Station KYLS, Ironton, Missouri, for the reasonable costs in changing frequency.

5. In view of the above, we believe the public interest would be served by proposing the substitution of Channel 225C2 for Channel 225C3 at Malden, Missouri, since it could provide Malden with expanded reception service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Ironton, Missouri	225A	225A
Malden, Missouri	225C3	225C2

6. IT IS ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, David E. Smith Communications, Inc. , the licensee of Station KYLS, Ironton,

¹ Channel 224A was previously allotted to Ironton. In response to a one-step application filed by Station KYLS, Channel 225A was substituted for Channel 224A. Station KYLS currently holds a license to operate on Channel 224A.

² The coordinates for Channel 225C2 at Malden are 36-39-48 and 89-47-39.

³ The coordinates for Channel 224A at Ironton are 37-34-23 and 90-41-35.

Missouri, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 224A in lieu of Channel 225A.

7. Pursuant to Section 1.87 of the Commission's Rules, David E. Smith Communications, Inc., may not later than July 14, 1997, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on David E. Smith Communications, Inc. to furnish additional information. If David E. Smith Communications, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, David E. Smith Communications, Inc. will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest

8. IT IS FURTHER ORDERED, That the Secretary Shall Send by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making and Order To Show to the following:

David E. Smith Communications, Inc.
Station KYLS
1242 Highway OO
Fredericktown, Missouri 63645

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before **July 14, 1997**, and reply comments on or before **July 29, 1997**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

John M. Pelkey
Haley Bader & Potts P.L.C.
4350 North Fairfax Drive, Suite 900
Arlington, Virginia 22203-1633

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments. Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D, C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.